

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

MAR 28 1994

BARBARA W. LEVY, CLERK

In re:

SHERMAN PAUL HOGREFE,

Chapter 7

Debtor

Bankruptcy No. 92-41695XM

-----  
NORTH IOWA COOPERATIVE  
ELEVATOR,

Plaintiff

Adversary Proceeding No. 92-4166XM

v.

SHERMAN PAUL HOGREFE,

Defendant

**JUDGMENT**

This proceeding having come on for trial or hearing before the court, the Honorable William L. Edmonds, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

IT IS ORDERED AND ADJUDGED: that the plaintiff's motion to compel and motion for sanctions is granted. Defendant Sherman Hogrefe shall provide a written consent to counsel for North Iowa Cooperative Elevator to permit Co-op to obtain Hogrefe's 1991 and 1992 bank records from Norwest Bank, Metropolitan Bank and Albert City Savings Bank. Co-op may request copies of Hogrefe's records from the banks. Co-op shall initially pay banks for the cost of production. Co-op shall file an affidavit with the court on the cost of production. These costs will be assessed to Hogrefe except to the extent that Co-op obtains records from the banks which Hogrefe has turned over to Co-op.

IT IS FURTHER ORDERED AND ADJUDGED that Hogrefe shall forthwith permit Co-op and its counsel to inspect 1991 state and federal tax returns, and if they exist, 1992 state and federal tax returns.

IT IS FURTHER ORDERED AND ADJUDGED that sanctions are awarded in favor of Co-op and against Sherman Hogrefe and David M. Nelsen, jointly and severally, for attorney's fees in the amount of \$997.50. Sanctions shall be paid by no later than May 13, 1994.



*[Seal of the U.S. Bankruptcy Court]*  
Date of Issuance: March 28, 1994

BARBARA A. EVERLY  
*Clerk of Bankruptcy Court*

By: *Larris Stagle*  
*Deputy Clerk*

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

FILED  
U.S. BANKRUPTCY COURT S.C.  
NORTHERN DISTRICT OF IOWA

APR 08 1994

BARBARA A. EVERLY, CLERK

IN RE:	)	
	)	
SHERMAN PAUL HOGREFE,	)	CHAPTER 7
	)	BANKRUPTCY NO. 92-41695XM
Debtor,	)	
-----	)	
	)	ADVERSARY NO. 92-4266XM
NORTH IOWA COOPERATIVE	)	
ELEVATOR (42-1177465)	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO
	)	RECONSIDER
SHERMAN PAUL HOGREFE	)	
	)	
Defendant.	)	

COMES NOW Defendant, Sherman Paul Hogrefe, by and through his attorney, David M. Nelsen, 956 East State Street, Mason City, Iowa 50401, and moves the Court to reconsider it's Order of March 28, 1994 Re: Plaintiff's Motion to Compel and states:

1. The Court in V. stated "the court will award attorney's fees for work done after the turnover of documents on February 14. This included time billed in the amount of \$237.50 for Duffy's meeting with Nelsen on February 24. The court will also award attorney's fees for the hearing on this matter including Duffy's travel time to Fort Dodge. The time allowed for the hearing and travel time on March 22-23 will be eight hours."

2. In IV. The Court stated "the refusal to turn over the 1991 tax returns was not substantially justified, and there is no reason why sanctions should not be awarded against Hogrefe and his counsel."

3. The record is entirely void that Hogrefe's counsel ever had custody or control of the 1991 tax return.

4. The record is entirely void that Hogrefe's counsel ever suggested or directed that the 1991 tax returns not be turned over to the Plaintiff.

5. The Court has misunderstood the record in attempting to find personal responsibility, liability or sanctions on counsel for the Defendant and because of the same, the Court should remove any reference to counsel as being responsible or judgment being entered against counsel.

6. The itemized statement submitted as Plaintiff's Exhibit A under date of February 24, 1994, was an error and it was January 24, 1994, not February 24, 1994. Consequently, any conclusion that that amount should remain as a sanction has been misunderstood by the Court as shown by the record. It is further shown by the exhibit attached hereto and marked as Exhibit 1 by this reference made a part hereof.

7. Of the eight hours for hearing and travel time on March 22-23, the majority of the time was taken up with other matters such as summary judgment, resistance to the same, motion to strike affidavit in support of summary judgment, all of which were denied or overruled by the Court and consequently, would not be fair and equitable sanctions against Defendant.

8. There was amply time to complete these matters at Mason City, Iowa, the place where the case was filed, thereby precluding any need to drive to Fort Dodge, Iowa and back and creating \$380.00 of additional time attempted to be charged by counsel for the Plaintiff. Further, the Court has

disallowed normal fee for travel time in bankruptcy cases and has allowed only half of the fee normally charged by the attorney.

9. The Court in it's Order states "These costs will be assessed to Hogrefe except to the extent that Co-op obtains records from the banks which Hogrefe has turned over to the Co-op. Delozier v. First National Bank of Gatlinburg, 109 F.R.D. 161 (E. Dist. TN 1986) is helpful in that the cost of producing any documents that are inspected by the Plaintiff is not the cost of the Defendant, but that of the inspecting party.

10. *The Court has misapplied the law as to reproduction of documents after inspection that a party desires to make by assessing such costs or liability to the producing party.*

WHEREFORE the Defendant, Sherman Paul Hogrefe, moves the Court to amend and correct it's Order under date of March 28, 1994 to comply with the matters set out above and for such other and further relief as justified in the premises.

Respectfully submitted,  
NELSEN LAW OFFICE

By   
David M. Nelsen 000003983  
956 East State Street  
Mason City, IA 50401  
(515) 424-5188

ATTORNEY FOR DEFENDANT

Copy to:  
Mr. John Duffy  
Laird Law Firm  
Post Office Box 1567  
Mason City, Iowa 50402

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copy made  
4-8-94 JN

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U.S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on April 6<sup>th</sup>, 1994.



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INFORMATIONAL COPY TO:  
CLIENT

IN ACCOUNT

FILE # 09471

BJD

AIRD, HEINY, MCMANIGAL, WINGA, DUFFY &  
STAMBAUGH, P.L.L.C.  
POST OFFICE BOX 1567  
MASON CITY, IA 50402-1567  
T.D. NO.: 42-1395412

DATE 02/28/94

NORTH IOWA COOP. ELEVATOR  
19856 MAIN STREET  
P. O. BOX 1275  
MASON CITY, IA 50402

PLEASE DETACH AND RETURN THIS  
PORTION WITH YOUR REMITTANCE

AMOUNT REMITTED \$

DATE	DESCRIPTION	PREVIOUS BALANCE →	
	PROFESSIONAL SERVICES		1,444.20
01/21/94	TELEPHONE HEARING WITH JUDGE EDMONDS ON MOTION COMPELLING DISCOVERY FILED 11-15-93, MOTION FOR LEAVE TO AMEND FILED 12-14-93, SECOND MOTION COMPELLING DISCOVERY AND APPLICATION REGARDING INTERROGATORIES; CONFERENCE WITH DAVID NELSEN TO ATTEMPT TO SETTLE DISCOVERY DISPUTES; PREPARATION FOR HEARING		205.00
01/24/94	MEETING WITH DAVE NELSEN TO DISCUSS DISCOVERY ISSUES		237.50
	CONFERENCE WITH BILL BOWEN CONCERNING STATUS OF CASE		19.00
	ATTEND MOTION TO COMPEL DISCOVERY HEARING		47.50
01/25/94	HEARING BEFORE COURT ON MOTION TO COMPEL DISCOVERY FILED 11-15-93, MOTION TO COMPEL ANSWERS TO INTERROGATORIES RE HOGREFE		95.00
01/30/94	CONFERENCE WITH GLENN FEILNER, FACILITIES DIRECTOR FOR FOXLEY GREEN, CONCERNING HOGREFE		28.50
02/04/94	TELEPHONE CONFERENCE WITH DAVE NELSEN CONCERNING DEPOSITION OF BOWEN, DEPOSITION OF HOGREFE, PRODUCTION OF DOCUMENTS BY HOGREFE, HOGREFE'S FIFTH AMENDMENT RIGHTS AND EFFORTS BY HOGREFE FOR PROTECTIVE ORDER, JOINT MOTION TO DELAY DISCOVERY DEADLINE, DEPOSITION OF PLEGGENKUHLE		47.50
02/05/94	WORK ON ANSWERS TO INTERROGATORIES RE HOGREFE		380.00
02/08/94	WORK ON SUPPLEMENT TO ANSWERS TO INTERROGATORIES SERVED 6-23-93		142.50
	ATTENTION TO SUPPLEMENTAL ANSWERS, LETTER TO ATTORNEY NELSEN, CONFERENCE WITH RICHARD SCHURTZ AND BILL BOWEN		150.00
02/10/94	DRAFTING NOTICE OF ORAL DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS, LETTER TO DAVID NELSEN RE HOGREFE		47.50
02/11/94	DRAFTING THIRD MOTION FOR ORDER COMPELLING DISCOVERY, MOTION FOR SUMMARY JUDGMENT, LETTER TO CLERK OF COURT, RESEARCH SECTION 727A(6)(A) AND "IN RE AILETCHER"		285.00
02/16/94	PREPARATION FOR AND TAKING DEPOSITION OF HOGREFE		1,187.50
	CONFERENCE WITH BILL BOWEN AND DEPOSITION OF BILL BOWEN BY DAVID NELSEN; CONFERENCE WITH ATTORNEY SWEESY (CONTINUED)		522.50

EXHIBIT "1"

IN ACCOUNT WITH

FILE # 09471

BJD

LAIRD, HEINY, MCMANIGAL, HINGA, DUFFY &  
 STAUBAUGH, P.L.L.C.  
 POST OFFICE BOX 1567  
 MASON CITY, IA 50402-1567  
 I.D. NO.: 42-1395412

DATE 02/28/94

NORTH IOWA COOP. ELEVATOR

PAGE 2

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

AMOUNT REMITTED:

DATE	DESCRIPTION	PREVIOUS BALANCE →	
	PROFESSIONAL SERVICES (CONT.)		
02/18/94	CONFERENCE WITH JUDGE EDMONDS' SECRETARY REGARDING TRANSCRIPT OF HOGREFE TESTIMONY ON 3-30-93, LETTER TO CLERK REQUESTING TRANSCRIPT OF HOGREFE TESTIMONY AT TRIAL		28.50
02/18/94	ATTENTION TO BILL BOWEN FILE, DRAFTING LETTER TO NELSEN CONCERNING DATES OF CORRESPONDENCE IN BOWEN'S INVESTIGATION FILE, LETTER TO SWEESY		28.50
	INTERVIEW OF KATHY AND JOHN ANDEREGG RE HOGREFE		142.50
	CURRENT SERVICES		3,714.50
	AVR CREDITS & ADJUSTMENTS		
02/10/94	PAYMENT ON ACCOUNT - THANK YOU		1,444.20-
ACCOUNT STATUS	1-30 3714.50	31-60 .00	61-90 .00
		OVER 90 .00	
		BALANCE DUE	3,714.50

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

U.S. BANKRUPTCY COURT X  
NORTHERN DISTRICT OF IOWA

JUL 07 1994

BARBARA A. EVERLY, CLERK

IN RE:

SHERMAN PAUL HOGREFE,	)	Chapter 7
	)	
Debtor.	)	Bankruptcy No. 92-41695XM
-----		
NORTH IOWA COOPERATIVE ELEVATOR,	)	
	)	
Plaintiff,	)	Adversary No. 92-4266XM
	)	
vs.	)	
	)	
SHERMAN PAUL HOGREFE,	)	
	)	
Defendant.	)	

ORDER RE: MOTION TO RECONSIDER

The matter before the court is the Motion to Reconsider filed by defendant Sherman Hogrefe and his attorney David M. Nelsen. Hearing on the motion was held May 24, 1994, in Mason City. Hogrefe and Nelsen ask the court to reconsider its Order and Judgment of March 28, 1994 in which it awarded plaintiff sanctions against Hogrefe and Nelsen for failing to produce documents in compliance with an earlier order of the court.

Movants first point out an error in the court's award based on a mistake by plaintiff in identifying the date of certain work done by plaintiff to obtain compliance with the discovery order. Plaintiff agrees that the mistake was made in identifying the date. The court will, therefore, amend its order to reduce the amount of sanctions from \$997.50 to \$760.00.

Nelsen contends that there should be no award of sanctions against him because the record is not sufficient to support a finding that he advised Hogrefe not to turn over the 1991 tax

return. The court will amend its order and upon reconsideration of the evidence, the court will not impose sanctions against attorney Nelsen. The court agrees there is insufficient evidence to find that Nelsen advised Hogrefe not to turn over the tax returns.

The court has considered the balance of the motion and determines that there is no basis for further amendment. Accordingly,

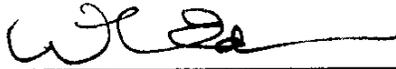
IT IS ORDERED that the Judgment entered March 29, 1994, shall be amended to read as follows:

IT IS ORDERED that the plaintiff's motion to compel and motion for sanctions is granted. Defendant Sherman Hogrefe shall provide a written consent to counsel for North Iowa Cooperative Elevator to permit Co-op to obtain Hogrefe's 1991 and 1992 bank records from Norwest Bank, Metropolitan Bank and Albert City Savings Bank. Co-op may request copies of Hogrefe's records from the banks. Co-op shall initially pay banks for the cost of production. Co-op shall file an affidavit with the court on the cost of production. These costs will be assessed to Hogrefe except to the extent that Co-op obtains records from the banks which Hogrefe has turned over to Co-op.

IT IS FURTHER ORDERED that Hogrefe shall forthwith permit Co-op and its counsel to inspect 1991 state and federal tax returns, and if they exist, 1992 state and federal tax returns.

IT IS FURTHER ORDERED that sanctions are awarded in favor of Co-op and against Sherman Hogrefe for attorney's fees in the amount of \$760.00. Sanctions shall be paid by no later than July 1, 1994. Judgment shall enter accordingly.

SO ORDERED ON THIS 6<sup>th</sup> DAY OF JUNE, 1994.



William L. Edmonds, Chief Bankruptcy Judge

I certify that on 6-1-94 I mailed a copy of this order and a judgment by U. S. mail to: David Nelsen, John Duffy and U. S. Trustee. *JS*

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UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

U.S. BANKRUPTCY COURT X  
NORTHERN DISTRICT OF IOWA  
JUL 07 1994  
BARBARA A. EVERLY, CLERK

IN RE:

SHERMAN PAUL HOGREFE,	)	Chapter 7
	)	
Debtor.	)	Bankruptcy No. 92-41695XM
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NORTH IOWA COOPERATIVE ELEVATOR,	)	
	)	
Plaintiff,	)	Adversary No. 92-4266XM
	)	
vs.	)	
	)	
SHERMAN PAUL HOGREFE,	)	
	)	
Defendant.	)	

JUDGMENT

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